IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 765 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIPBHAI DHANJIBHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 765 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR KT DAVE LD. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, the petitioner - detenu, who has been detained by the Commissioner of Police, Vadodara City, Vadodara in exercise of power conferred under Section

3(2) of the Gujarat Prevention of Anti-social Activities Act,1985 ("PASA Act" for short) vide order dated January 17, 2001, has prayed to issue writ of mandamus quashing and setting aside the order of detention dated 17.1.2001 and further prayed to direct the respondents authorities to release the petitioner forthwith.

2. From the averments made in the petition as well as in impugned order of detention, it is manifest that petitioner is involved in four criminal cases which are registered against him at; (i) Karelibag Police Station vide C.R. No. I 61 of 1999 u/s 324, 114 of I.P.C. and u/s 135 of the B.P.Act (ii) Raopura Police Station with C.R. No. I 38 of 1999 u/s 452, 427, 506(2), 114 of I.P.C., (iii) Karelibag Police Station with C.R. No. I 159 of 2000 u/s 324, 323, 504, 114 of I.P.C. and u/s 135 of B.P.Act and (iv) Karelibag Police Station with C.R. No.342 of 2000 u/s 327, 432, 504, 114 of I.P.C. and u/s 135 of the B.P.Act. It is submitted by learned advocate for the petitioner that all the above stated criminal cases are pending for trial and as per the order passed by respondent no.2 - Detaining Authority, ordinary provisions of law are found insufficient to curb his anti-social activities and he has become an obstruction to the maintenance of public order and, therefore, the Detaining Authority has passed impugned order of detention as there is no other alternative remedy.

3. It is contended by Ms. Subhdra Patel learned advocate for the petitioner that the allegations made against the petitioner are not correct and there is no material to show that the petitioner has disturbed the public order at the time of commission of the aforesaid criminal cases. It is further contended that statements of witnesses recorded by the Investigating Officer do not come or fall within the purview of disturbances of public order and at the most, they are at the instances of breach of law and order.

In sum and substance, according to learned advocate for the petitioner, the grounds mentioned in the impugned order are vague and general and, therefore, the impugned order passed by the Detaining Authority is liable to be quashed and set aside by releasing the petitioner-detenu forthwith.

4. Mr. K.T.Dave learned AGP for the respondents has opposed this petition. However, he has not controverted the factual aspect of the petition, and contended that there are four criminal cases registered against the petitioner-detenu and, therefore, with a view to maintain

law and order, it was necessary for the Detaining Authority to detain the petitioner-detenu. However, he has conceded that while supplying the relevant papers to the petitioner-detenu, the Detaining Authority has not taken care to supply all the papers in vernacular language of the petitioner. Therefore, he has contended that appropriate order may be passed in view of the settled principles enunciated by the Hon'ble Apex Court as well as by this Hon'ble Court.

5. Heard Ms. Subhadra Patel learned advocate for the petitioner and Mr. K.T.Dave learned AGP for respondents.

6. I have considered the submissions advanced by learned advocates for the parties and have perused the averments made in the petition as well as in the impugned order dated 17.1.2001 passed by respondent no.2 Detaining Authority.

7. On perusal of bunch of papers, it is seen that pages nos. 15, 44 and 54 are written in English language, while rest of the papers are in Gujarati language.

It is well settled principles of law enunciated by the Hon'ble Supreme Court as well as by this Hon'ble Court that "non-supply of relevant papers as well as the order of detention to the detenu in his own language, will cause prejudice to the detenu in making effective representation".

8. In the matter of Powanammal Vs. State of Tamil Nadu and another reported vide AIR 1999 SC 618, the Hon'ble Supreme Court has held that order of remand in English relied upon by the Detaining Authority to reach subjective satisfaction and non-supply of Tamil version of said order to detenu as she could not understand English, caused prejudice to her and, therefore, her continued detention was held illegal.

Applying the said principles to the facts and circumstances of the present case, there is no dispute that pages nos. 15, 44 and 54 are written in English language and Detaining Authority has failed to supply translated version to the petitioner-detenu and thereby, petitioner's right of making effective representation is violated. On this sole ground, present petition deserves to be allowed by quashing and setting aside the order of detention passed by respondent no.2 - Detaining Authority.

9. For the forgoing reasons, this petition is allowed. The order of detention dated 17/1/2001 passed by the Commissioner of Police, Vadodara City, Vadodara, against the detenu - Dilipbhai Dhanjibhai Makwana is hereby quashed and set aside. The detenu shall be released forthwith, if not required in any other case. Rule is made absolute. Direct Service is permitted.

(A.M.Kapadia,J.)

(vipul)